HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 492 of 2007

Between:

B.V.N. Malleswar Rao & another

… Appellants

And

The Commissioner of Co-operation & Registrar
Of Co-operative Societies,
Government of Andhra Pradesh,
Hyderabad & others.

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri M.V. Rajaram

June 18, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 29.01.2007 passed by the learned Single Judge in Writ Petition No.19340 of 1996 vide which he rejected the appellants' challenge to Memo No.A1/3839/96, dated 06.09.1996 issued by Joint Director of Agriculture, Kakinada (respondent No.8 herein) as also proceedings Rc.No.8739/95 M, dated 24.08.1996 issued by District Collector (Co-

operation), East Godavari District at Kakinada (respondent No.2 herein).

A perusal of the record shows that while the appellants were posted as Assistant Agriculture Officers, Malkipuram and Sakhinetipalli and Uppalguptam respectively, the Commissioner and Director of Agriculture, Andhra Pradesh (for short, 'the Commissioner') conveyed the Government of India's approval for supply of pesticides to the farmers at subsidised rates under the Centrally Sponsored Scheme. As per that scheme, the society supplied P.P. chemicals to Assistant Agriculture Officers for distribution among needy farmers. On receipt of complaint that there was large scale misappropriation of funds collected from the farmers to whom P.P. chemicals were supplied, respondent No.2 and Commissioner for Co-operation and Registrar of Co-operative Societies issued proceedings Rc.No.5129/93-M, dated 30-8-1995 and Rc.No.48306/95-V, dated 13-10-1995 for holding inquiry into the affairs of the society under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act'). On receipt of the report of enquiry submitted by Joint Registrar (Vigilance)/Enquiry Officer, respondent No.2 issued notice dated 16.05.1995 to the appellants to deposit the amounts specified therein. This was followed by order dated 21-8-1996, by which respondent No.2 sanctioned prosecution of the appellants and other Assistant Agriculture Officers apart from the office bearers of the society. Respondent No.8 also issued Memo dated 06.09.1996 requiring the appellants to deposit the amounts shown outstanding against their names. Appellant No.1 filed reply to contest the notice and then filed Writ Petition No.19340 of 1996. A similar petition filed by Sri V. Bhaskar Rao was registered as Writ Petition No.19987 of 1996. They challenged the sanction accorded by respondent No.2 for their prosecution and Memo dated 6-9-1996 issued by respondent No.8 by contending that respondent No.2 does not have the jurisdiction to sanction their prosecution and

respondent No.8 could not have issued memo without holding enquiry in terms of Section 60 of the Act.

Initially, the learned Single Judge stayed further proceedings, but after hearing the counsel for the parties, dismissed both the writ petitions by common order dated 29.01.2007. The relevant portions of that order are as under:

> "While Sri M.V. Raja Ram, learned counsel for the petitioners, would seek to canvass on merits and contend that the petitioners are in no way concerned with the liability and that no action can be taken under the provisions of the Co-operative Societies Act, the impugned order dated 6-9-1996, merely provides that, in case, the petitioners do not make payments, disciplinary action be initiated. Needless to state that, in case, disciplinary action is initiated against them, it is always open for them to take all such defences, as are available to them in law, in such a departmental enquiry. This Court, in judicial review proceedings, would not, ordinarily, examine various contentions urged on merits to issue directions against initiation of disciplinary proceedings except where such initiation is without jurisdiction.
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> Insofar as the proceedings of the Collector and District Magistrate, East Godavari District, dated 21-8-1996 is concerned, it is an order sanctioning prosecution against various persons including the petitioners herein. While Sri M.V. Raja Ram, learned counsel for the petitioners, would contend that the District Collector does not have any power to sanction prosecution, the impugned order states that the District Collector had sanctioned prosecution in exercise of the powers delegated to him under G.O.Ms.No.2351, Food and Agriculture (Cooperative-IV) Department, dated 18-11-1967. Whether or not the District Collector has the power to sanction prosecution is a matter which does not necessitate examination at this stage for the bar under Section 197 Cr.P.C., on which reliance is placed by Sri M.V. Raja Ram, is to the Court taking cognizance of the offence without prior sanction. It is always open to the petitioners herein to raise all these please with regards District Collector not having the power to sanction prosecution at that stage."

Sri V. Bhaskar Rao challenged the aforementioned order of the

learned Single Judge in Writ Appeal No.477 of 2007, which was dismissed by the Division Bench on 14th June, 2007.

Shri M.V. Rajaram, learned counsel appearing for the appellants fairly admitted that the issue raised in this appeal is similar to the one raised in Writ Appeal No.477 of 2007 which was dismissed on 14.06.2007, but submitted that the Court may consider the matter afresh because while disposing of Writ Appeal No.477 of 2007, the Court was greatly influenced by the fact that the appellant has already retired from service, whereas the appellants of this appeal are still in active service.

We have considered the submission of the learned counsel, but have not felt impressed. Rather, we are convinced that the appeal is liable to be dismissed.

It is true that while dismissing Writ Appeal No.477 of 2007, the Division Bench did take into consideration the fact that the appellant had retired from service, but that factor alone did not influence dismissal of the appeal. As a matter of fact, the Court considered the merits of the appellant's challenge and held that there was no justification for the Court's interference with the action initiated by respondent Nos.2 and 8. Therefore, we see no reason to take a different view in the appellants' case.

In the result, the appeal is dismissed. The detailed reasons recorded in judgment dated 14.06.2007 passed in Writ Appeal No.477 of 2007 shall be read as part of this judgment.

As a sequel to dismissal of the writ appeal, W.A.M.P. No. 940 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

18.06.2007

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